

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AZRA RAHIM,

Plaintiff,

v.

PROVIDENCE HEALTH AND  
SERVICES,

Defendant.

CASE NO. C13-1499RAJ

ORDER

Soon to be ripe for the court's consideration is Plaintiff's motion challenging the constitutionality of the Washington Law Against Discrimination's exemption of religious not-for-profit organizations (RCW 49.60.040(11)) from its scope. As the court explained in its May 1, 2014 order, that question matters in this case only because Plaintiff's claims invoking Title VII of the Civil Rights Act of 1964 are timely only if the religious exemption is invalid. Moreover, as the court explained in the same order, Plaintiff has a breach of employment contract claim and claim of race or national origin discrimination that will proceed (via 42 U.S.C. § 1981) regardless of the fate of her Title VII claims. The only aspect of this case that hangs on the fate of Plaintiff's Title VII claims is her claim of gender discrimination.

The court was prepared to address the constitutional question quickly, in part because the parties filed a May 14 joint statement requesting that the court do so. Two

1 developments since then lead the court to question whether it is necessary or prudent to  
2 address the constitutional question imminently.

3 Just before the deadline for amending pleadings expired, Plaintiff filed a motion to  
4 amend her complaint. The motion was unusual. Plaintiff asked, for the first time, to  
5 assert discrimination claims invoking the WLAD. But Plaintiff's request was  
6 conditional. She explained that if the court were to rule that the WLAD's religious  
7 exemption were unconstitutional, she would abandon her WLAD claims and rely solely  
8 on her Title VII claims. She did not explain that choice, and the court cannot explain it.  
9 The court has never before encountered a plaintiff willing to abandon WLAD claims in  
10 lieu of Title VII claims.

11 Defendant's response to the motion was that it did not object to the proposed  
12 amendment. But, whereas Defendant had previously joined Plaintiff's request to address  
13 the constitutional question quickly, Defendant now took the position that the court ought  
14 to defer consideration of that question, at least until the court could consider dispositive  
15 motions challenging all of Plaintiff's claims. Defendant's position was that it could  
16 defeat Plaintiff's WLAD claims on the facts (that is, by demonstrating that it did not  
17 discriminate), which would make it unnecessary for the court to address the constitutional  
18 question.

19 Defendant's proposal was reasonable; Plaintiff mooted it by withdrawing her  
20 motion to amend without explanation. One possible explanation is the Plaintiff is more  
21 interested in challenging the WLAD's religious exemption than she is in proving any  
22 WLAD claim. Regardless of Plaintiff's preferences, the court must not prioritize  
23 constitutional questions over mundane factual questions if it can avoid doing so. *Lyng v.*  
24 *NW Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) ("A fundamental and  
25 long-standing principle of judicial restraint requires that courts avoid reaching  
26 constitutional questions in advance of the necessity of deciding them.").

1 In this case, Defendant offered a reasonable solution to avoid a constitutional  
2 question. Plaintiff responded by abandoning an affirmative request for relief in an  
3 apparent attempt to avoid the solution. When Defendant filed its opposition to Plaintiff's  
4 summary judgment motion, it again requested that the court defer resolution of the  
5 constitutional question.

6 The court orders as follows: No later than July 31, 2014, Defendant shall file a  
7 statement indicating whether it will agree to permit Plaintiff to pursue her Title VII  
8 claims through dispositive motions and, if necessary, through trial. That agreement  
9 would permit Defendant to challenge Plaintiff's Title VII claims in any manner, factual  
10 or legal, that did not depend on the constitutionality of the WLAD's religious exemption.  
11 If Plaintiff prevails on her Title VII claim of gender discrimination (or otherwise prevails  
12 on a Title VII claim in a manner that impacts Defendant), Defendant would be permitted  
13 to renew its contention that Plaintiff's Title VII claims were untimely because of the  
14 religious exemption. If Defendant did so, the court would resolve the soon-to-be ripe  
15 summary judgment motions on the constitutional question.

16 Defendant is not obligated to agree to the court's proposal. If Defendant does not  
17 agree, the court will decide the constitutional question.

18 DATED this 23rd day of July, 2014.

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21 The Honorable Richard A. Jones  
22 United States District Court Judge  
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